

**UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA**

Alexandria Division

In re:

WILLIAM PRATHER and  
ETHEL PRATHER,

Debtors.

Case No. 00-11473-RGM  
(Chapter 7)

**MEMORANDUM OPINION**

THIS CASE was before the court on January 14, 2003, for approval of the trustee's final report and account and the application of Gold, Morrison & Laughlin, P.C., for compensation and reimbursement of expenses as counsel to the trustee. This case was commenced as a chapter 11 case on April 3, 2000, and was converted to a case under chapter 7 on April 11, 2001.

The trustee administered one asset, a claim to funds interplead in the Circuit Court of Arlington County, Virginia. The amount held by the Circuit Court was \$103,094.28. Prior to the filing of the voluntary petition in bankruptcy, a Commissioner in Chancery of the Circuit Court had issued his report. Exceptions were taken and the matter was referred back to the Commissioner in Chancery for further consideration. The debtor was represented in that matter, both before bankruptcy and during the chapter 11 proceeding, by Foster Friedman. After the case was converted to a proceeding under chapter 7, the trustee's attorney, a member of his law firm, negotiated a

settlement.<sup>1</sup> The settlement distributed the funds among the parties to the interpleader action. The trustee received \$38,645.97. The balance was distributed to the other parties.

The debtors originally scheduled this asset on Schedule B with an unknown value. They also scheduled the asset on Schedule C, Exempt Property, claiming \$1.00 exempt. On June 15, 2001, the trustee filed an objection to the claim of exemption asserting that the value of the asset was unclear and probably more than \$1.00. On June 26, 2001, the debtor amended Schedule C and claimed \$9,992.00 as exempt under the Virginia Homestead Exemption. They stated that the current market value of the property was unknown. On October 24, 2001, an order was entered withdrawing the trustee's objection and establishing that the debtors would receive \$9,992.00 from the Arlington County lawsuit.

Friedman also asserted that he had an attorney's lien on the Prather's proceeds from the lawsuit. He asserted a lien of almost \$20,000.00. The trustee resolved this matter by agreeing to recognize Friedman's lien to the extent of \$10,000.00. In addition to the \$10,000.00 secured claim, Friedman was also awarded compensation by this court of a chapter 11 administrative expense in the amount of \$7,650.00 for legal fees and \$51.00 for expenses in connection with the Arlington suit.

Debtors' chapter 11 counsel, Steven Ramsdell, was awarded \$9,975.00 for fees and \$385.00 for expenses during the chapter 11 phase of the case. Gold, Morrison & Laughlin, P.C., the trustee's law firm, applied for compensation of \$10,583.50 for fees and \$264.78 for expenses. The trustee's

---

<sup>1</sup>The trustee filed a motion to approve the settlement of the Arlington County suit on December 19, 2001. The settlement was approved on January 8, 2002. The trustee received the settlement proceeds on January 25, 2002. No further activity is reflected in the court file after the date the funds were received except for the filing of the trustee's final report.

fee is \$3,629.82 plus expenses of \$54.60. The trustee's final report proposes to pay the trustee's fees and his law firm's fees in full and to pay about 78% of the legal fees of the debtors' chapter 11 counsel and Arlington counsel. No unsecured creditors are proposed to receive any dividend.

The court has carefully reviewed the application of Gold, Morrison & Laughlin. Most of the work was performed by a young associate with limited bankruptcy experience.<sup>2</sup> While the application for compensation reflects her hourly rate at \$175.00, the time records reflect that she charged \$210.00 per hour for some of the services rendered. At the hearing, counsel represented that all time was charged at \$175.00 per hour. There is no discussion of the different fees in the application. The court accepts counsel's representation and all time expended will be calculated at the rate of \$175.00 per hour.

The law firm did not separate its billings by tasks. There were three tasks undertaken by counsel. The first task was the objection to the debtors' claim of exemption. Counsel charged the estate \$958.00 for filing and resolving the objection. This objection is a routine matter. It is not at all uncommon for debtors to schedule a claim of exemption at \$1.00. It is appropriate for the trustee to object so that the total amount of the exemption can be established, particularly, when the value of the asset is unknown. *See Taylor v. Freedland & Kronz*, 503 U.S. 638, 112 S.Ct., 1644, 118 L.Ed.2d 280 (1992). In this case, the objection was immediately met by an appropriate amendment to the debtors' Schedule C. The resolution was memorialized with an order establishing the debtors'

---

<sup>2</sup>Counsel should not take the comments in this opinion as a criticism of the associate's work product. It was well done. However, it is clear that there was a lot of time expended in learning about bankruptcy, the bankruptcy process and attorney's liens. The basic education and training of young associates is the firm's responsibility, not the estate's.

claim of exemption at \$9,992.00. No court appearance was required. Based on the time entries, the appropriate fee is \$140.00.

The second undertaking was more substantial. It involved the settlement of the Arlington County Circuit Court suit. The trustee's law firm billed the estate \$7,530.50. It should be noted that there were no hearings in the Arlington County Circuit Court. No discovery was propounded or responded to. In fact, the case had already been heard by a Commissioner in Chancery. The Commissioner had issued his report. The matter was referred back to the Commissioner for further consideration. The trustee's attorney's time was spent in researching the case and in negotiating with the parties to come to a resolution of this matter without further litigation.

The same young associate from the law firm was also assigned this task. The trustee participated from time to time but it is not clear from the time records that he participated in his capacity as an attorney, but rather as the client, that is the trustee. As such, his time is compensated from the trustee's fee and should not be charged as an attorney's fee.<sup>3</sup> A total of \$4,303.00 was billed to the settlement aspect of the Arlington case. Another \$3,227.50 was billed to obtain bankruptcy court approval of the compromise. The court, after having carefully reviewed the time records, believes that the appropriate fee for the negotiations of the settlement agreement is

---

<sup>3</sup>The court notes that the trustee's time was spent in conference with the attorney handling the case and one settlement conference which the attorney responsible for the case also attended. In this instance, he was acting as the client. The conferences and the attendance at the settlement conference are matters that a client would be expected to be involved with. The court further notes that attendance by more than one attorney at a meeting is discouraged. While it is allowed, there needs to be some specific reason for more than one attorney at a particular meeting. The issues presented in this case and the Arlington case and the status of the Arlington case do not reflect circumstances justifying two attorneys. The trustee charged the estate an hourly rate of \$345.00 for his services as attorney to himself as trustee. The prevailing hourly rate is \$265.00 per hour. Inasmuch as all of his services are more properly classified as trustee services, no attorney's fees will be separately awarded for his work. Finally, the court notes that no time records for the time the trustee devoted to the case as trustee were submitted.

\$2,500.00 and that the appropriate fee for obtaining bankruptcy court approval of the settlement was \$1,130.00.

The third task was related to the Arlington suit. It was the attorney's lien asserted by Friedman against the debtor's proceeds. The law firm billed a total of \$1,925.50. Again, there were intraoffice conferences which in this case are not justified as legal conferences, but rather as conferences between an attorney and client. At such, the attorney's time should be compensated but not the client's time. The client is the trustee who is compensated by his separate trustee's fee. The issues presented were the validity of the asserted attorney's lien and the ability to avoid the lien under the Bankruptcy Code. After having carefully considered the time records and the work expended, the court believes that a total of \$875.00 is appropriate for the resolution of this legal matter.

The law firm also requested expenses of \$264.78. The expenses include local travel which is not an allowable expense. It also includes computer research and messenger service. None of those requested fees are itemized and the court is unable to determine whether they were necessary or reasonable. Finally, telecopier expenses of \$18.52 were also requested. The court is aware that another judge of this court, the Honorable Stephen S. Mitchell, does not allow any telecopier expenses on the basis that they are normal and usual overhead expenses of law firms. Other courts allow such charges as expenses. This judge has continued the practice of permitting telecopier expenses but subject to a maximum page rate which was calculated to recover the actual cost of the service. This law firm sometime ago installed an electronic device on its telecopier which measures the time of transmissions, both received and sent. The bills are computed based on the transmission time. The law firm, despite requests, has never compared the fees charged with the maximum page

rate allowable by the court. The court is, therefore, unable to determine whether these fees are comparable with the page rate or whether they are reasonable. While there is nothing inherently improper in charging by the time of transmission, either receiving or sending transmissions, it is the unit cost applied to the transmission time that is important. Expenses and reimbursements are intended to reimburse expenses and not to provide a profit center to the law firm. In this case, the court does not know if the requested telecopier fee of \$18.52 is for one page, 10 pages or 110 pages. Without knowing the actual costs incurred or whether the method used by this law firm is comparable to the page rate permissible in this court, the fees must be disallowed.

The application for compensation of Gold, Morrison & Laughlin, P.C. will be allowed in the amount of \$4,645.00 for fees and \$116.48 for fees. The trustee's report will be approved as amended to change the amount of professional fees and expenses payable to Gold, Morrison & Laughlin, P.C., to these amounts, to pay the chapter 11 administrative expenses in full and to pay the balance to pro-rata to the unsecured creditors based on the claims as set forth in the final report in the order of priority set forth in the Bankruptcy Code.

Alexandria, Virginia  
January 16, 2003

---

Robert G. Mayer  
United States Bankruptcy Judge

copies to:

Steven B. Ramsdell  
Tyler, Bartl, Burke & Gorman, PLC  
206 North Washington Street, Suite 200  
Alexandria, Virginia 22314

H. Jason Gold  
Wiley Rein & Fielding, LLP  
2925 Jones Branch Drive, Suite 6200  
McLean, Virginia 22102-3900

Frank Bove  
Office of United States Trustee  
115 South Union Street, Suite 210  
Alexandria, Virginia 22314

10317